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A Historical Perspective

By John E. Fleming

Affirmative action and compensatory treatment are not new concepts in American history, at least in their broader dimensions. Within a few decades following America's independence from Great Britain, states were giving valuable tax benefits to industrial concerns in order to make these young manufacturers competitive in the open market. Following the War of 1812, the national government passed protective tariffs which especially favored the infant textile industry. Although other Americans were inconvenienced in that they were forced to pay higher prices for more expensive American goods, the federal government deemed it in the national interest to provide, over a limited period of time, special compensatory treatment for a particular sector of society.

The issue of compensation confronts the nation today in the *Bakke* case now before the Supreme Court. The case poses the problem of how best or even whether to give compensatory treatment to a particular sector of American society as a short term solution to a long term problem. This article examines why, from a historical perspective, Blacks should receive special consideration, especially in the area of education.

By the end of the Civil War and the emancipation of the slaves, the nation was faced with the issue of how, and, again, even whether the ex-slaves would be compensated for generations of deprivation. While special compensatory treatment was not new, compensation for Blacks was complicated by the emotionalism of race. Southern whites saw any and all assistance for the freedmen from the federal government as an intrusion into states' rights and were incensed at the idea of elevating their former slaves to the status of free and equal citizens. It soon became apparent that Capitalist America was unwilling to alter the economic structure, even in the South, by providing the freedmen with 40 acres and a mule. Hence, the nature of the debate over

compensation centered on such issues as political equality, modified welfare proposals and educational opportunities. It was not long before Blacks were rudely awakened to the fact that political rights are unsecured without an economic foundation.

Denial of Opportunities

In 1860, there were four and a half million Blacks in this country, the vast majority of whom were slaves. With the exception of a few select slaves, Blacks were denied all means of self elevation, especially opportunities for education. Slaveholders were well aware that educated slaves were a direct threat to the survival of the peculiar institution. Consequently, Southern society deliberately denied Blacks opportunities to learn how to read and write. The prohibitions were not only extended to the slaves, but also to the free Blacks in the South and, in modified form, to free Blacks in the North.

Considering the generations of deprivation and enslavement, it was totally unrealistic to expect Blacks to adjust to freedom in a hostile environment without some form of compensation. The more enlightened leadership in Congress realized this and initiated a series of legislative programs designed to aid the ex-slaves in their effort to adjust to freedom. Congress passed, and the states ratified, the 13th, 14th and 15th Amendments which freed the slaves, gave them citizenship and the right to vote. Congress very wisely reserved to itself the right to enforce the provisions of the Reconstruction Amendments.

It soon became evident to the nation that Southern whites would not quietly acquiesce to the social revolution proposed by Congress. They tried to re-enslave the freedmen through the passage of restrictive and punitive legislation called the Black Codes. What they could not achieve through law was attempted through violence and intimidation. Among the laws to protect the freedmen, the federal government passed legislation which created the Bureau of Refugees, Freed-

men, and Abandoned Lands. The bureau distributed food, clothes and other supplies and provided job placement and, on a restricted basis, some homestead land. Its most important contribution was in the area of education where it provided schools, books and transportation for teachers.

The major problem was that the bureau was inadequately funded and its life was extremely short. Thus, by 1870, the bureau was virtually inactive and by 1877, the federal government had removed the last federal troops from the South, leaving the freedmen on their own resources, unprotected. Even the Supreme Court began to dismantle the carefully worked out legal structure designed to protect the freedmen from their former owners. This legal assault culminated in the now infamous *Plessy v. Ferguson* decision of 1896 which gave federal sanction to the doctrine of separate-but-equal. Through violence and intimidation, Southerners had stripped Blacks of their basic rights and relegated them to the bottom of a caste society. The limited education which was offered was designed to assure that they remained at the bottom of this caste system.

But even so, had Blacks been accorded equal—even through separate treatment—the need for affirmative action in higher education would not be so pressing today.

The period from 1900 to 1954 is marked by oppression and denial of even a facsimile of equality. Elementary education was totally inadequate, and secondary schools, when they existed at all, were markedly inferior to those of whites. Black colleges attempted to compensate for the inferior education of their students, but in more instances than not, they too lacked the resources to overcome years of injustice. Southern white schools did not admit Blacks, and Northern institutions admitted so few that its impact on the education of Blacks was slight. In the area of higher education, American institutions awarded only 316 doctorates to Blacks between 1876 and 1943. Yet whites received more

than 38,000 doctorates between 1926 and 1942.

It was evident that unless the federal government eliminated its own official sanction of segregation, the private sector would have little incentive to eliminate their discriminatory policies. The great breakthrough came in 1954, when the Supreme Court issued the *Brown* decision, after the NAACP had carefully developed an assault on segregation by attacking the absence of graduate and professional education in the South.

Legal Barriers

While the legal barriers to integration were crumbling and more Black students were admitted to white colleges, few institutions were willing to end their discriminatory hiring practices. By 1960, there were 5,910 Blacks employed in colleges and universities as faculty members, including those employed in predominantly Black colleges. This represented slightly more than 3% of the total number of college and university teachers. During the academic year 1968-69, the percentage of Black faculty members dropped from slightly more than 3% to 2.2% nationwide. This was all the more startling when one realizes that the 1960s witnessed a rapid acceleration in the growth of higher education as children born during the 1940s reached college age. Although the recruitment of Black undergraduate students was expanding, there was not a corresponding increase in the number of Blacks recruited to graduate and professional schools. The pressure of the civil rights movement in the 1960s had little impact on institutions' hiring practices.

By the 1970s, the percentage of Black faculty members had not reached the 1960 level of 3%. What this suggests is the failure of colleges to put forth a good faith effort in training Black graduate students and recruiting and hiring Black faculty members during the 1960s when the academic market place rapidly expanded to accommodate increased student enrollment. Further, this lack of putting forth a good faith effort was remi-

niscent of the reluctance of state public school systems to integrate after the *Brown* decision. Had colleges and universities been sincere in their good efforts as they professed to have been, they would have initiated programs to encourage prospective Black students to enter graduate schools. The increased Black graduate school enrollment thus would have contained many more Blacks who would have been available for faculty positions in the 1970s. While the academic community was a leader in the 1960s in advocating the elimination of discrimination outside the academic market place, it failed badly in setting its own house in order.

In 1972-73, there were more than 500,000 faculty members in all types of institutions in the country, yet Blacks comprised only 15,000 or 2.9% of the total. Blacks were distributed by field from 0 in such areas as in atmosphere, earth and space science to 9.1% in trade and industrial subjects. This problem is further compounded by the lack of available Black Ph.Ds. In 1973, roughly 2.7% of all Ph.D. recipients with American citizenship were Black. This proportion varied by field from 1.1% in engineering, mathematics and physical science to 6.7% in education. There is some indication that the number of Blacks receiving the Ph.D. is increasing but not at a very rapid rate. If Blacks were trained and hired without discrimination, instead of roughly 15,000 faculty members there would be a minimum of 55,000 employed in institutions of higher education. Thus, the history of Afro-Americans not only requires but demands compensatory educational programs and affirmative action in employment at a minimum.

Compensatory treatment is not new. American society gives special compensation every day to such big businesses as the aerospace industry or multinational oil corporations. Congress spends billions of dollars to develop weapons of dubious strategic military value, while retreating in the nation's commitment to equality of opportunity.

12 Contrary to what some people might believe, equality of opportunity is not a reality. Blacks have not been compensated for the deprivation of slavery and the injustice of segregation. The whole idea of affirmative action is a new development and the government has moved extremely slowly in this area. In fact, between 1870 and 1940, little or no action was taken to end racial discrimination. Finally, in 1941, under the threat of a March on Washington from A. Phillip Randolph, President Franklin D. Roosevelt issued Executive Order 8802, which urged defense industries to employ workers without regard to race, creed, color or national origin. Needless to say, such "urging" had little impact on discriminatory hiring practices. Still, the Executive Order was more important for the precedent it established than for what it actually accomplished. Although lacking enforcement powers, the Executive Order, for the first time, tied anti-discrimination policies to the government procurement process and established the Fair Employment Practice Committee.

Executive Orders

American Presidents, from Roosevelt to Lyndon B. Johnson, issued a total of eight Executive Orders banning employment discrimination by federal contractors. So many orders were issued because of the protracted nature of employment discrimination. Further, the Executive Orders failed to eliminate discrimination because the committees they established lacked enforcement powers. The fact that employment discrimination was by no means eliminated after the passage of the 1964 Civil Rights Act indicates that discrimination can exist, and even flourish, in the absence of affirmative steps. Discrimination had become part and parcel of the employment process. President Johnson recognized the degree to which race prejudice and discrimination had become institutionalized when he issued Executive Order 11246. The Executive Order and its implementing regulations require a federal contractor to do more than ensure employment neutrality. It requires

employers to make additional efforts to recruit, employ and promote qualified members of groups formerly excluded.

The scarcity of Black faculty members in institutions of higher education is a major indication of the exclusionary employment practices of higher education, practices which remain even after the passage of the Civil Rights Act of 1964. It is evident that without strong enforcement of the regulations, significant changes in employment practices of institutions of higher education will not occur. Such changes are necessary because of the role these institutions play in educating today's youth and tomorrow's leaders. Further, affirmative action for Blacks must be tied to special minority admissions programs because academia is in the unique position of being able to control the future supply of college teachers. Certainly, the success of affirmative action in faculty employment will be determined by the commitment of academicians to increasing the number of Blacks in graduate and professional schools.

History has shown that racial discrimination has a compounding affect that can be overcome only through positive intervention. Affirmative action is one means of intervening. It can ensure that Blacks have a fair opportunity to compete if there is a commitment on the part of all concerned to see that it succeeds. □